SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2686

SPONSOR: Governmental Oversight and Productivity Committee and Senators Lawson and Bullard

SUBJECT: Faith-Based Initiative

DATE: April 9, 2003 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Wilson	GO	Fav/CS
2.			CF	
3.			AHS	
4.			AP	
5.				
6.				

I. Summary:

The bill creates an institute at Florida Agricultural and Mechanical University to examine the programmatic, statutory, and financial barriers to the provision of religiously neutral but faith-based activities of public agencies.

The bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

Despite the nominal prohibition against the establishment of religion or the provision of secular financial aid for sectarian purposes in Article I, s. 3 of the Florida Constitution, there exists wide latitude for the involvement of religious organizations in non-sectarian public functions. Various sections of Florida law provide authorizations for such activities in the ordinary conduct of government business. Chapters 397 and 944, F.S., authorize the involvement of religious organizations in assisting drug dependent individuals or offenders in or just released from correctional facilities.[1] The Florida State Employees Charitable Campaign, the only statutorily authorized umbrella charitable campaign for State of Florida employees, also permits the channeling of voluntary employee wage deductions to a variety of secular and religious organizations.[2] Moreover, as a matter of budgetary practice, the Legislature annually appropriates funds for the provision of public services to community-based organizations which, though religious in orientation, provide non-sectarian assistance activities to people in need.

[1] Sections 20.315,397.333, 944.026, 944.473, 944.4731, 944.703, 944.704, 944.705, 944.706, 944.707, 944.803, 945.091, 948.08, and 945.10, F.S.
[2] Section 110.181, F.S.

Increased attention to the use of faith-based providers has been evident at the federal and state levels. A 1996 report by the Governor's Advisory Task Force on Faith-Based Community Service Groups made wide-ranging recommendations on the use of such religious organizations in anti-poverty, educational licensure, child care, public safety, and housing assistance programs.[3] At the federal level there are seven agencies with specific faith-based initiatives coordinated through a presidential Office of Faith-Based and Community Initiatives.[4] The focal points for their activities are programs for at-risk youth and prisoners, elders in need, homeless persons, substance abusers, and welfare-to-work families. A separately funded Compassion Capital Fund administered through the Department of Health and Human Services provides seed capital to groups assisting these purposes.

In its final report on drug abuse issues, the Florida Coalition of Faith-Based providers listed 50 member organizations that provided residential assistance to persons with substance abuse concerns in the criminal justice setting.[5]

As discussed, below, there are limits to the appropriateness of religious-based activity in a civic setting. Generally, these fall under several categories: overt support of religious purpose; proselytizing; and conversion of public funds to private purposes.

III. Effect of Proposed Changes:

Section 1. The bill creates the Florida Families Faith-Based Institute at the Florida Agricultural and Mechanical University and subjects it to the public records and open meetings statutes, chs. 119 and 286, F.S., respectively.

The Institute has the duty to examine barriers to faith-based service providers, provide training and technical programmatic and fund-seeking assistance, establish a statewide resource center, serve as a fiscal intermediary for matching public funds, and serve as the official liaison for similar activities hosted by federal agencies.

The bill requires the Institute to issue an annual report to the Governor and the presiding officers of the Legislature by January 1 of each year.

Section 2. The bill appropriates $700,000 notwithstanding the provisions of various portions of the planning and budgeting statutes in ch. 216, F.S.

Section 3. The bill takes effect July 1, 2003.

---

[3] *Faith in Action . . .A New Vision for Church-State Cooperation in Texas*, Austin, TX: December 1996.
[4] They are the United States Departments of Justice, Agriculture, Labor, Health and Human Services, Housing and Urban Development, Education, and the Agency for International Development.
[5] *The Faith-Based Solution: Breaking the Cycle of Addiction Through a Seamless Continuum of Care for Incarcerated Substance Abusers*, January 23, 2001

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

In its March 7, 2001 staff report on the implementation of the recommendations of the 2000 Task Force on Self-Inflicted Crimes, the staff of the Senate Criminal Justice Committee provided a thorough discussion of the constitutional bases underlying the federal and state constitutional provisions on the establishment of religion. That analysis is provided here, altered only as the context of the bill under review changes:

"There are two clauses within the First Amendment to the United States Constitution that deal with religion. The amendment reads, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." The first clause is referred to as the Establishment Clause and the second is the Free Exercise Clause. The Supreme Court has held that both clauses are applicable to the states. *See Cantwell v. Connecticut*, 310 U.S. 296 (1940), *Everson v. Board of Education*, 330 U.S. 1 (1947).

There is a natural antagonism between a command to not establish and a command to not inhibit the practice of religion, and the meaning of these clauses has been constantly debated. However, over time they have been interpreted to require a general governmental adherence to neutrality in terms of religion, allowing the government to seek secular goals in a religiously neutral manner. *See, e.g.*, *Schempp v. U.S.*, 374 U.S. 203, 295 (1963).

The Free Exercise Clause

The Free Exercise Clause of the First Amendment prohibits the state from passing laws that prohibit the "free exercise" of religion. This phrase has been interpreted to mean that the government is prohibited from enacting a law that "either forbids or prevents an individual or institution from expressing or acting upon its sincerely held 'religious' beliefs." Furthermore, this clause has been cited in support of the provision of military and prison chaplain programs, based on the argument that because the recipients of these services are within government institutions, the government must provide them an opportunity to exercise their religious beliefs. *See, e.g., Id.* at 203, 296-97 (1963); *Gittlemacker v. Prasse*, 428 F.2d 1 (3d Cir. 1970). However, the right to practice ones

religion is not absolute, even in the free world, and must yield to the interests of society under some circumstances. *Reynolds v. United States*, 98 U.S. 45 (1878).

Under Florida's "Religious Freedom Restoration Act of 1998," the standard for determining whether the government may substantially burden a person's exercise of religion is if it demonstrates that application of the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest. Section 761.03, F.S. In *Warner v. City of Boca Raton*, 64 F. Supp.2d 1272 (S.D.Fla. 1999), the court used this standard to hold that the right to display vertical grave decorations in a public cemetery was not protected under this statute, nor was the prohibition against such display in violation of the Free Exercise Clause of the First Amendment.

The Establishment Clause

While the Free Exercise Clause requires that the government allow inmates some opportunity to practice religion, the confines of the Establishment Clause places restrictions on the government's ability to support such programs. In prohibiting the making of a "law respecting an establishment of religion," the clause was intended to protect religious liberty. *Zoarch v. Clauson,* 343 U.S. 306, 314 (1952). It has been interpreted to preclude government imposition, sponsorship or even support of religion. But it also will not allow the government to force a person to remain away from the practice of religion. *Everson v. Board of Education,* 330 U.S. 1 (1947). The phrase "respecting the establishment of religion" has been most often interpreted to mean that government should be neutral in matters of religion, and should not prefer one religion over another, nor religion over non-religion.

In *Lemon v. Kurtzman,* 403 U.S. 602 (1971), the Supreme Court adopted a three-part test, derived from its earlier cases, to assist it in deciding challenges to government action as an establishment of religion. In order for government action to be permissible under the Establishment Clause, it must have a secular purpose, have a primary effect that neither advances nor inhibits religion, and it must not cause excessive governmental entanglement with religion. A religious purpose or motivation does not mean the act is unconstitutional so long as there is also a bona fide secular or civic purpose, such as housing the homeless. So long as the primary affect of the government action is not to advance religion, it is constitutionally acceptable for a law to have a remote or incidental effect of advancing religion. In determining the excessiveness of the possible entanglement, the Court has considered the nature of the aid that is provided, the character and purpose of the institution receiving the aid, and resulting relationship between that institution and the government.

The Supreme Court has said "...[T]his court has never held that religious institutions are disabled by the First Amendment from participating in publicly sponsored social welfare programs." *See Bowen v. Kendrick*, 487 U.S. 589 (1988). In *Kendrick*, the Court held 5-4 that it is not unconstitutional to provide federal funding to religiously affiliated institutions that provide services relating to teenage sexuality and pregnancy. In this case, Congress' goal of reducing teenage sex happened to coincide with the goals of the

religious group. The Court stated that it cannot be avoided that at times religiously affiliated organizations will have the same secular goals as Congress.

The Supreme Court most recently examined this issue in *Mitchell v. Helms,* 120 S.Ct. 2530 (2000) (plurality opinion), in which it held that lending educational equipment and books bought with government funds to sectarian schools was not an unconstitutional violation of the Establishment Clause. *Id.* at 2555; *Id*. at 2572 (O'Connor, J., concurring in the judgment). The Court used a modified *Lemon* test, as set forth in *Agostini v. Felton*, 521 U.S. 203 (1997), to determine whether there was an establishment clause violation. The Court looked at whether the statute had a secular purpose, and whether it had the primary effect of advancing or inhibiting religion. In determining whether the statute had the effect of advancing religion, the Court looked at whether it resulted in governmental indoctrination, defined its recipients by reference to religion, or created an excessive entanglement.

The Court found that under the statute in question, aid was allocated on the basis of neutral, secular criteria that did not favor or disfavor religion, and was available to both religious and secular groups on a nondiscriminatory basis. In addition, the statute determined eligibility for aid in a neutral fashion. Finally, the Court found that the statute did not have an impermissible content because it required the aid to be secular, neutral, and nonideological. Accordingly, the Court found that the statute did not have the effect of advancing religion and "cannot reasonably be viewed as an endorsement of religion," *Id.* at 2543, 2552-53 (quoting *Agostini,* at 235).

The Florida Constitution

The Florida Constitution, Art. I, s. 3, provides: There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.

In interpreting this provision, the Florida Supreme Court has stated:

> A state cannot pass a law to aid one religion or all religions, but state action to promote the general welfare of society, apart from any religious considerations, is valid, even though religious interests may be indirectly benefited. If the primary purpose of the state action is to promote religion, that action is in violation of the First Amendment, but if a statute furthers both secular and religious ends, an examination of the means used is necessary to determine whether the state could reasonably have attained the secular end by means which do not further the promotion of religion.
>
> *Johnson v. Presbyterian Homes of Synod of Fla., Inc.*, 239 So.2d 256, 261 (Fla.1970) (holding constitutional a statute exempting from taxation properties

> owned by religious organizations, used as homes for the aged and operated not-for-profit)

Furthermore, the Florida Attorney General has opined that:

> Neither the Establishment Clause of the First Amendment nor this section prohibits the maintenance of religious facilities within the confines of the county jail or the compensation from public funds of a chaplain to minister to the religious needs of the inmates; provided that such facilities and clergy are made available to all inmates regardless of religious belief, and that no one religion is given preference over another.
>
> *Op.Atty.Gen*., 077-55, June 17, 1977

The Fourth and Fifth District Courts of Appeal have recently upheld a statute against establishment clause challenges under Florida's constitution when the statute being attacked was a criminal penalty enhancement for selling drugs within 1,000 feet of a church. *Easley v. State*, 755 So.2d 692 (Fla. 4th DCA 1999), and *Rice v. State*, 754 So.2d 881 (Fla. 5th DCA 2000)."

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The leveraging of revenues resulting from a coordinated funding approach is a real possibility and, to that extent, participating community providers may be able to provide additional services to tax-supported agencies.

C. Government Sector Impact:

The bill appropriates $700,000 in nonrecurring funds to the Institute. It is unclear how those funds are to be allocated among expenditure categories. Because the Institute's legal status is contingent upon its receipt of federal tax exempt status under the Internal Revenue Code, the full annualized cost of its operations may be greater or lesser than this amount. An undated copy of a summary budget document attributed to the proposed Institute indicated that a portion of its activities were to be subcontracted to another vendor.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.